Docket No. (1)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

In The

Supreme Court of the United States

Douglas G. Hilgers

Petitioner

v.

State of North Dakota

Respondent

On Petition For Writ Of Certiorari

To The Supreme Court of North Dakota

State v. Hilgers, 2004 ND 160

PETITION FOR WRIT OF CERTIORARI

Douglas G. Hilgers
In Pro Se
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(218) 624-5585

Questions Presented:

¶1 In the case of State of North Dakota v. Doug Hilgers, In it's prosecution and conviction, under a North Dakota Statute, criminalizes the civil case and long standing, pro se efforts of Doug, to represent his Son's plight in the civil Courts.

¶2 The hamstrung Jury, in it's efforts, as well, to protect the un-represented child, issues the statement, before verdict, with the approval of the Court.

> " We the Jury in the entitled matter, find that; We have grave concern for the health, welfare and safety of B.T.L. and that the system has failed him. miserably."

¶3 The Jury's statement is then removed from the file of the case by the trial Judge.[app. # 17,p.31]

¶4 Upon only a small part of evidence ex-culped, by the pro se defendant, at trial, a different civil trial court, 3 days later, upon Doug's hand written petition:
Ordered:[app.314,p.28,29]

> "The Court, upon the receipt of the documentation from the defendant Douglas G. Hilgers, issues a temporary change of custody as it relates to B.T.H., now residing with the plaintiff, Brenda M. Hilgers. A temporary custody order will be in effect immediately and the defendant is directed to immediately pick up his son and remove him from the situation that he is presently in."

¶5 Never the less, Doug remains a convicted felon, subject to the prejudice and loss of privileges there in, Subject to revocation of his probation and a 5 year prison sentence: All relief, to present, denied by the State trial and appellate Courts.

¶6 As in Higers v. Hilgers 2002 ND173 ¶29, demonstartes that through the intrusion into the delicate and cherished Constitutional protected relationships, in the state courts;

> " The district court abuses it's discretion when it fails to address non-frivolous issues presented to the Court."

¶7 As in Purdy v. Flemming, 2002 SD 156; A North Dakota Custody case, ¶15-17, a five year old child, Amanda, sexually abused and murdered: "with no adequate assessment done¶39; it takes a strong judicial stomach to set aside one's emotions"¶69 The written report to a north Dakota Judge, by Liz Thorn, contained a graphic description of Thorn's interview with Amanda." demonstrates the critical issues faced this dramatically growing group of non-custodial parents trying to protect the interests of their children, under vague and overly subjective standards of review, without protection, under the U.S. Constitution U.S., Amendment IV, equal protection, as here to for afforded other significant groups upon other constitutionally protected areas , .e.g. Shapiro; Troxel; Interest of M.L.B.95-b53 U.S. (19960; Bode v. Connecticut, 4101 U.S. 656,661 ; (divorce proceedings) " The Court has long required when a family association basic importance of our society is at stake." And Griffin through Mayer ;"Extending though petty offences and quasi-criminal cases; and Ortwein v, Schwab, 410U.S. 665,661 With respects to ' examines closely the government interest in defense of intrusion.

Question #1: In the case of the criminalization of Hilgers v. Hilgers, the State, intentionally circumventing the Civil processes of the Uniform Interstate Child Custody Protection Act; Committing Hilgers to Criminal charges by preventing him the process given under the N.D.R.Ct Rule 8.2 and NDCC Contempt Ch. 27-10: Denying the Child a Guadrdian ad litem[1]. Does this cases/cases,[2]

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[1] In 2001 N.D had only six qualified G.A.L.s to services the children of the whole State; The trial Court was expressly unaware of the 2001

[345]**Under the Amendment XIV, U.S. Constitution; In their growing numbers, deserve such equal protection and due process?**
Would B.T.H. and Amanda be healthy and alive if, as a matter of right, they had legal advocates or benefit of the Interstate compact, as designed, to protect the best interest of the Child?

Question #2. Do the facts and law of the criminal conviction and appeal, violate the State's application of law and a standard of review of, solely civil, cases [Christainsen: Flattun-Riemer, at ¶19] **comport with Hilgers' protection under the U.S. Constitution due process and equal protection guarantees established in : Ingram; Griffin; Hardy v. U.S.; thereby prejudicing other criminal and quasi-criminal defendants, under this standard of review who cannot afford access to the record in the time required under Rule?**

> State v. Hilgers 2004 ND 160 ¶¶12,23,34,36, 39,40,41 "we will decline to review an issue if the record on appeal does not allow meaningful and intelligent review of the trial court's error"

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revisions in law; Its funding remains dubious and Doug was never afforded the protections of assistance of Counsel

[2] N.D.S.C. Case types

Year	No. Reviewed	Pro Se	Family Pro se	Criminal Pro Se
1999	382	81	19	19
2000	365	65	5	12
2001	307	49	5	16
2002	353	67	12	24
2003	361	55	6	18

[3] N.D. has over 2,000 divorces/annum; 770,000 contested divorces per annum, nationally

[4] N.D. Does not denote data on No. of out state litigants or G.A.L. assignment

[5] North Dakota has no family Courts or active use of Appellate Courts

¶8 In the petitioners appeal, State v. Hilgers 2004 ND 160 (Criminal) the opinion, at multiple sites it's inability for meaningful review due to ¶¶19,36,41 Hilgers providing no record of the trial; The Court claims to have reviewed the file thoroughly¶¶8, "based on the record": there is nothing in the record to indicate" Where as, in ¶20 ' Because Hilgers did not provide a transcript...." It is clearly demonstrated that the relevant statements were made from the States, allowed, partial transcript Re; it's apposing Doug's Petition for Stay of Judgement pending appeal App: #25 pg. 37;

¶9 It is apparent that both State v. Steen 200 ND 152, 615 N.W.2d 555, The court must make a record of controverted facts: State v. Beckman 1999 ND 54, 591 NW 2d 120, The right to address the Court at sentencing with a written report of sentencing required by N.D.C.C.

¶10 The written record is profuse of Hilgers attempts to obtain relevant transcript at sentencing as well as for appeal: He had asked for a stay to have time and to prevent his professional nursing license from being compromised in order to earn enough to purchase it: One of the transcript requests was for the: App. 20,21, pg. 34-36

> Court's statement, at hearing; " I know that you don't have any money."

Hilgers was advised at App.#10, Pg 25-26, upon his petition for more time for the transcript;

> " to address it in his brief" [App. 10,p.25-26] ,

¶11 To address the prior cases forwarded by the State/the Court to legitimize this flawed standard derived from both Christainsen v. Christiansen 2001 ND 120, 630 2d482 NW and Flattum - Riemers, 2003 N.D. 70,¶8 660 N.W. 2d558 They are both civil cases applied retro- spectively to the Trial of Hilgers (see also State v. Lemons 2004 ND 44; Hilger ¶22," We have recently addressed the issue of telephonic testimony, " :"Because there is no precedent").

Christiansen; A divorce/alimony/support case in which the defendant still received relief: in pro se representation

Flattum-Riemers: Also a civil case , in pro se and with respects to Question 1; The Court tolerated the relocation of 3 of the 4 children, to Central Asia, for an undetermined period of time, into a geo-politically unstable region; after changing the venue of hearing far from the appellant's home.[6]

¶12 There were 31 issues raised on Appeal, most negated, as without merit, due to the lack of record.¶43; Many raise basic rights/significant error issues and will be addressed , as tolerated, in the Statement of the Case/Opinion. They were requested as preserved in Rehearing Petition and, Respectfully, here as well.

Question#3. Does the process by which Hilgers' Defense Counsel was removed, The submission to trial, conviction, sentencing and appeal, without provision for assistance of counsel, without waiver, satisfy his fundamental rights under application of North Dakota Law, and protection of the U.S. Constitution, Amendment IV, VI, thereby, under the precedent established in State v. Hilgers , subject other criminal and quasi-criminal defendants to prejudice and lack of meaningful review?

¶13 At the time of the Initial Appearance, September 13, 2002, State v. Hilgers, under North Dakota's new criminal law Ch. 12.1-18, Kidnapping stemming from the N.D.R.Ct Rule, 8.2; " Ex-Parte Interim Orders in Domestic Relations Cases"[7],[8] the civil case, Ward County 98-C-0959 was now 4

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[6] As in Hilgers v. Hilgers, the venue went from Minot to Williston, to Grand Forks and back to Minot see insert: map of N.D. Judicial Districts

[7] This action was brought by Doug's past attorney McIntee, now representing his ex-spouse, Brenda.(the court so informed)

years old and Doug had not been able to afford legal counsel since the first hearing in an effort to remedy the "default divorce judgement", transacted more than eighty miles from the parties home. August 31, 1998. Now a resident of Minnesota, he had come to The North Dakota Supreme Court, at Bismarck, to argue the appeal of his civil petitions for visitation and guardian ad litem appointment for his son, the extraordinary child support amounts and the contempt citation issued from the interim order but denied hearing on either issue,[9] as prescribed under statute: He was arrested as he left the Supreme Court chambers. He had been ordered to

> Have no contact with the minor son, B.T.L. until the Court so ordered, which has never been rescinded to this day."[10]

He had been denied extradition: Denied benefit to responding to a summons in lieu of a warrant[NDRCrimP Rule 4.] He was refused a copy of the warrant with which to respond: This Rule 8.2 petition, [11]specifically requested that Doug not be allowed to enter North Dakota;[12] He was taken 180 miles, to Bottineau County and held without access to a telephone or access to legal references; He, at initial appearance was granted public "stand by council" but he did not appear at that time; His youngest son, now 16, continued to have to live outside the "custodial "home and, at oral argument, Brends expressed to the Supreme Court that:

> "B.T.L. was 16 and he could leave any time he wanted to."

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[8] Cannon 3,of NDR Judicial Conduct, conditions ex-parte orders

[9] The Case remanded back to the trial court but the Contempt Order never even mentioned .

[10] The irrefutable facts , conspicuously ommitted from the opinion State v. Hilgers

[11] At pretrial hearings, the prosecution referred to this action as, "a minor collateral matter: see N.D.R.Judicial Conduct, Cannon 3 re; reporting attorney misconduct to the appropriate authority.

[12] Rule 8.2, for purposes of restrain, reqires 'in person testimony"

Hilgers v. Hilgers 2002 ND 173, ¶29 : "The trial Court abuses it's discretion when it fails to respond to non-frivolous issues presented to the Court."
The Trial Court, now seated in Williston, N.D.[see map insert] refused to issue orders and recused himself.
¶14 Doug had accrued $22,000 in arrears from $900.00 the first week of the divorce Judgement, even though fully employed as a registered nurse, his wages subject to 50% withholding of his wages, now 65%. He had to borrow $2000.00 from his Sister to get legal counsel.[13,14]
¶15 All potential savings were dedicated to the family home, in Northwestern Wisconsin, built by Doug and his Brother, without a mortgage. All four of the Families Children were raised there. The family had moved to N.D. because of the shortage of nurses in The Indian Health Service and so Brenda could be closer to her family: There was never any plan not to return to WI. If divorce was eminent, Brenda had asked that the homestead be given over to the children (2 then minors): However, because Doug was not represented at the divorce hearing, not yet back to work after his second heat attack; Brenda achieved total control of the homestead, although, by order, directed to sell it and give Doug half of the proceeds. She has not; nor has she ever returned there to maintain it, or contribute anything toward the delinquent taxes in order to preserve it for the children. At the time of the criminal trial, there arose the first " in-rem" tax foreclosure of $7,000 in spite of Doug's best efforts to pay them.[15]

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[13] In 2002, Doug's fiancée had to file bankruptcy due to the burden Doug placed on her.
[14] Although this required a simultaneous appeal as the criminal case, filed August , 2003, returned under supervision,, upon explanation to the Criminal Court, Judge Foughty advised ,"just write the Judge a letter"
[15] At sentencing, the criminal trail Court adressed Ms. Hilgers, as well, to sell the property(he had read the divorce decree)

¶16. Due to Brenda's continual efforts to disrupt Doug's employment,[16] he and the children were now without health insurance. The C.S.E.U. of Minot rejected Doug's petitions for review even though he now had to go without his prescribed medication and the "C.P.A,P," respirator that he required, at night, to treat his sleep apnea and help stabilize his heart disease.[$100.00/mo.] In November 2003, Doug required treatment and incurred over $2,000 in medical bills; not being able to afford more definitive testing and treatment to stop his coronary artery disease from progressing.

¶17. On June 4,2001 , making the 1000 mi, round trip, to return B.T.H. to Engelstads each weekend, we struck a moose, Doug fracturing his 1st cervical vertabrae, totally destroying his 17 y.o. car and being removed from work[without sick pay] until August[with restrictions] . He could not afford another 17 y.o. car for another 6 mo. St. Louis Co., MN., Social Services vouched Robyn Engelstad, the gas money to pick B.T.H. up in Grand Forks ,MN.: No one else would assist, including the mother.

¶18 Doug had not had an attorney, now, in over 2 years; He was denied legal assistance because Brenda received it.

¶19 All of these considerations, not all inclusive, not even mentioned in the decision were offered to the Court in "in and out of camera exhibit, to justify " without undue hardship" for public defense council.

¶20 Due to the strain on his health and the 1000 mi. drives Doug made dozens of attempts to secure pro-bono and other assistance. Through the NDBA Referral Service , all he obtained was "send me the file and I'll see what I think"

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[16] The MN. Court's issued the order that Brenda was not to be informed of Doug's employer: Although the N.D.Courts were notified, they readily advised her.

Parties To the Proceeding:

For the Petitioner: Un-represented/ In Pro Se
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(218) 624-585

Previous Appointed Council [17]
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For the respondent: State of North Dakota
The Office of the North Dakota
Attorney General-Wayne Stenejem[18]
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The Un-represented Child:
B.T.H.
911 S. 72 nd Ave. W.
Duluth, MN., 55807

The Complainant: Brenda M. Hilgers[19]
211- 4th St E.
Bottineau, N.D., 58318

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[17] Mr. Hartyl, at a previous time, was appointed as the petitioners appointed public counsel and was released and replaced by Michael McIntee. Mr. Hartyl did not, overtly, inform the Court of this fact.

[18] The N.D. Attorney General, chaired the Family Law Committee, introducing the bill/law, the petitioner was prosecuted for.

[19] The complainant was represented in the civil case by the State's Attorney of Bottineau, Co., N.D. Swain Benson, who arranged for Michael McIntee to represent her.

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The North Dakota Constitution

(U.S. Constitution Ratified by North Dakota Feb. 17, 1911).

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2. 'Restrain" means to restrict the movement of a person unlawfully and without consent so as to interfere substantially with his liberty by removing him from his place of residence or business, by moving him a substantial distance from one place to another, or by confining him for a substantial period. "Restrain ' is without consent " if it is accomplished by force, intimidation, or deception; or b. any means including acquiescence of the victim, if he is a child less than 14 years old or an incompetent person, and if the parent, guardian, or person or institution responsible for the general supervision of his welfare has not acquiesced in the movement or confinement. See: legislative testimony/ /Intent Re; "Kidnapping"; "Abduction"

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N.D.R.Crim.P. Rule 31,e, 4, When a defendant interposes any other defense which can not be reflected in a special verdict and the evidence and defense is given at trial, the jury, if it so finds shall declare the fact in its verdict.
c. All proceedings connected with the taking of exceptions must be in the absence of jurors an a reasonably sufficient time must be allowed counsel to take exceptions an note them in the record of the proceedings; see State v. Schafer/Imhoff, 2 days

Other

The Uniform Child Custody Jurisdiction Act MN. §518.D(.204) Temporary Emergency Jurisdiction[20] ii,6

A court of this state has temporary emergency jurisdiction if the child is present in the state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, sibling or parent of the child is subjected to or threatened with mistreatment or abuse. "Abandoned"-Means left without provision for reasonable and necessary care or supervision See NDCC 14-09-22. Abuse or Neglect of a Child-Penalty(a),(b)

Dakota Legal Council for Indigents Rules 24

North Dakota Administrative Rule, Pattern Jury Instructions Rule 23 Rule 4. "Limitations", "All pattern Jury Instructions shall show that they are published only for pg20

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[20] Although North Dakota endorses the "Act/Compact" it uses a criminal expedient: Unknown re: these circumstance, Doug petitions the MN. Court's, 8/01,in that the Civil Court refuses to acknowledge the factual basis of abandonment not withstanding the evidence of abuse concealed by the State and it's Agencies, for months and years.

the Bench and the Bar and that publication does nor imply approval or authoritative construction by the Supreme Court."[21]

NDCC Ch§ 299 Judicial Procedure, Criminal pg26
"Indigent Defense Services and Costs March, 2001 Re: reviewable by Supreme Court. Re Recoupement of costs (chilling effect)

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pg24

The State of the Court Address, June, 2004-[sic. Rehearing Petition]
The Honorable C.J. VandeWallePg.2¶
4-6, Pg3 ¶2 i.e.: The 2003 Legislature adopted another study resolution which recognized the conflict arising from the administration of the indigent defense system by the judiciary as well as the present system is underfunded. Although the 2001 interim study did not result in legislation to resolve the problems, it did serve to increase awareness that we are in trouble with our current system."[22] [23]

" The legislative Assembly needs to know about the deficiencies of our present system and the need for change."

" The lack of funding has exacerbated the flaws inherent in our current system" N.D. less than 1/2 of the average funding than any State(9)in the Spanengberg Group Study ($3.23/cpatia: average $8.54/capita; ie Montana $10.22/ capita

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[21] Although use of PJI and even Civil PJI use by prosecution and Court was addressed on appeal, not mentioned in opinion.
[22] As represented in the Petitioners, unheard, rehearing petition.
[23] In addition to the multiple conflict, the writer of the Opinion, in State v. Hilgers sits on the Committee sited.

pg 24

The North Dakota's Legislative Counsels Background Memorandum: Indigent Defense and Public Defender Systems including State v. Smith 9arizona (1984)
In entirety i.e." Cost is usually the factor determining what type of indigent defense system a state or county adopts"

The other cases: see Cruel and unusual See gender bias
State v. Gracey, Jaime-5 days in jail, $200 fine

State v. Roehrich, (ex-parte custody order) Michelle-4 months probation no fine

State v. Renita Paul- Canadian citizen, from Tribal Court- no extradition

State v. Sorenson filed 7/30/02, (Grand Forks case) public defender, appearance by phone from Nevada)

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pg 5,6

Re: The legislative history of the Law (N.D.C.C. §
Ch. 12.1-80-05 " parental Kidnapping"
N.D. Senate Bill 2046(prev2130) 2000-2001, (previously HCR
3005) "Divorce And Custody and Support"
Initiated from a survey mailed to the members of the family law section of the of the State Bar Assoc. of North Dakota. (Statutory review)
Prior Kidnapping Law "inadvertently removed "upon the 1999 adoption of the Uniform Child Custody Jurisdiction Act ("the working group agreed this was an oversight")
Testimony; " One concern is the abuse and your non-custodial parent who can't do anything. Who do the children

turn to? A non-custodial parent should have the right to protect the child."

Purdy v. Flemming 2002 SD 156- ¶ 15,16,17,39, 69,The murder and sexual abuse of a 5 year old child-Oddly, the child resided in North Dakota, subject to N.D. Custody determination-The custodial parent's psychologist Ordered to evaluate the whole family: the child without G.A.L. and never interviewed. No, substantial social assessment done by N.D. or S.D.

¶15, " The dept. of Social services, of North Dakota Amanda was visiting in this state with her mother at the believed south Dakota had jurisdiction in the matter because time of the referral.

¶16 Because of the allegations of Amanda against her father, Purdy moved to have a custody arrangement modified in North Dakota (Would an action under the Uniform Enforcement Act, saved Amanda's life?)

¶17 was Amanda's substantive de process right of bodily integrity under the Fourteenth Amendment violated?

¶39 It takes a strong judicial stomach to set aside one's emotions concerning unspeakable acts inflicted upon Amanda and impartially review them against applicable law ¶ 69 (6). The written report to the North Dakota Judge by Liz Thorn contained a graphic description of Thorn's interview with Amanda ——" she wished that with my wishing wand that I could teach her daddy not to touch her on her private places"

See Dicipline of Wilka, 2001 SD 148 638 NW2d 245

> Clearly the requirement of candor towards a tribunal goes beyond simply telling a portion of the truth. It requires every attorney to be fully honest and forthright. We can not over emphasize the importance of attorneys in the state being absolutely fair with the court. Every Court has the

right to rely upon an attorney to assist it in ascertaining the truth of the case before it.

Is there really a Fatherhood Crisis? By Dr. Stephen Baskerville pgii

April, 2002, The social impact of governmental interference- "What we see in the "fatherhood crisis" may be an optical illusion. What many are led to believe is a social problem may in reality be an exercise of power by the state."

"One might interpret this statistic (Brinig and Allen; women file for divorce in over 70% of cases" Not only do they file more often ---they are more likely to instigate separation";" We have found that who gets the children is the most important component in deciding who files for divorce") to mean that what we call divorce has become in effect a kind of legalized parental kidnapping."

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pg.24

From: Request For Court-Appointed Counsel
In The District Court-State of North Dakota
Before Lester Ketterling --Pg. 2 #11.
" That the defendant understands any material misrepresentation herein could subject the defendant to a felony charge of perjury pursuant to Section 12.1-11-01 NDCC and the charge of false statements pursuant to section 12.1-11-02 NDCC." re: The trial Court's statement, at hearing" you have concealed assets" and the defendant demanding trial in the matter, hereby denied benefit of.

North Dakota Code of Judicial Conduct, Canon 3, D. et.al. Disciplinary Responsibilities: (1) A judge who receives information indicating a substantial likelihood that another

Judge has committed a violation of this code should take appropriate action.....Inform the appropriate authority. (2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules inform the appropriate authority See: McIntee, See; Bennett, R.; Byres,J.; Responsibilities of a Prosecutor

7. (a) Ex-parte communications (are authorized provided) that no party will gain a procedural or tactical advantage and allows an opportunity to respond

The United States of America
In The Supreme Court

Doug Hilgers
Petitioner

v.

U.S.S.C. Docket
No._____
(Application No. 04A495)

State of North Dakota
Respondent

Petition for Writ of Certiorari

From the Supreme Court of North Dakota
2004 ND 160

Upon the Criminal Conviction and Sentence, at Jury trial, March 26,27, 2003 having to proceed pro se, over his objection, at every phase of the proceedings.[1][2][3][4]

The Jury was hung, without a single defense jury instruction, and upon invitation of the Court, entered the statement, along with the verdict " We the Jury in this matter, find that we have grave concern for the health, safety and welfare, of the child, and find that the system has failed him

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[1] The Petitioner requested a stay until the Orders to remove his council were reviewed by the N.D. Supreme Court-Denied

[2] The Petitioner's council was removed without hearing on the matter-The Council did not resist

[3] The Petitioner Requested a Supervisory Order from the N.D.S.C.-Denied

[4] The Petitioner was denied any continuance to represent his defense, to respond to other cases, or to seek/attain assistance.

miserably."[1] see Jury Foreperson's statement as entered at Sentencing and Civil Custody Hearing App.#18 pg. 32-34

On April 2, within a week of conviction, the convicted Father, upon his petition, to the Civil Court, with only a small amount of evidence exculped and largely concealed by the agencies [2]of the complaint's home town and limited subpoena privilege and discovery, Doug was able to gain custody of his son and

" Immediately remove him from the situation that he was in" App. #14, pg.29

Sentenced, [3], [4]then to 18 months in prison, fined $1,500, costs, and his subpoena fees, To get and pay for a psychological evaluation before June, and 3 years of supervised probation (in Minnesota) and the cost there of with the stipulation among others " that he live alone".[5] And that he be subject to s sexual predator assessment. Prison time was suspended but Doug remains in jeopardy of a 5-year prison term. He relies on the protection given under Alabama v. Shelton____--U.S.___(2002)

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[1] This statement was removed from the record, by "request of the trial judge" see App. 17 pg. 31: He denies this at sentencing.

[2] The Trial Court requested a copy of the photographs from Swain Benson and possessed them at trial and at sentencing.

[3] The Trial Court expressed a specific cause to sentencing to prison, this an established perjuouse statement of the complainant (deemed by her local prosecutor to be" an inconsequential exaggeration") as, well not entered into evidence by the prosecution or heard by the jury. see Blakely v. Washington

[4] On appeal, the Higher Court claimed no record to refer to although under N.D.C.C. § 12.1-32-02(6), " All sentences imposed must be accompanied by a written statement by the court setting forth the reason's for imposing a particular sentence. The statement must become part of the record of the case." And State v. Steen ND 152,615,N.W.2d555 " The court must provide a written record of pre-sentence controverted facts"

[5] See U.S. Constitution/Bill of Rights Amendment VII " nor cruel and unusual punishment be inflicted"?

For a violation of North Dakota Century Code Ch 12.1-18-05.

"Removal of a child from state in violation of a custody decree-Penalty.-- Any person who intentionally removes, causes the removal of, or detains the person's own child under the age of eighteen years outside this state with the intent to deny another person's rights in violation of an existing custody decree is guilty of a class C felony. Detaining the child outside this state in violation of a custody decree for more than seventy-two hours is prima facie evidence that the person charged intended to violate the custody decree at the time of the removal."[1]

N.D.C.C. Ch. 12.1-32-01,4., A class C felony, for which a maximum sentence of five years imprisonment, a fine of five thousand dollars, or both, may be imposed.

Jurisdiction

I.

The petitioner seeks the discretionary review if the matter including any such supervisory capacity, as deemed consistent with substantial Justice, pursuant to Article III, of the United States Constitution and 28 U.S.C.§ 1257(a).

That the Petitioner has exhausted his Appeal to the Highest Court of the State, Ordering the Conviction AFFIRMED, August 4,2004, [app.#8,p.9-11] , and having been granted Petition for Rehearing, his petition was DENIED September 15, 2004[2] [app.# p.6-8][upon technical grounds?] that it was

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[1] In the "Opinion", the Court eludes to only part, of the statutory language

[2] On December 4, 2004, the petitioner, upon the findings of the Jury; the effort to subpoena his missing, cooperative witness re; the abandonment of the child and not present at the criminal trial: et. Al. Has petitioned the founding Civil Court for a new trial of the custody, contempt, and sanctions issued by the Civil Court, this, even though no hearing or review has yet been granted.

2 pages too long and did not leave sufficient left hand margin.[1]

Application was made, to this Court, for Extension of Time to File for Cetiorari, November 30, 2004-Extended to Jan. 13, 2005. [app.#1 pg. 4].

The petitioner applied to the Trial Court for a "stay" in order to conduct his criminal appeal and the simultaneous civil appeal of (Hilgers v. Hilgers, (2004 ND 95,679, N.W. 2d447)- the civil case then 6 years old, and motions pending for nearly 2 years.

> "these issues are clearly and repeatedly raised by Douglas Hilgers numerous motions filed with the Court" at ¶ 22-- DENIED

As above, the petitioner applied to the N.D. Supreme Court to conduct his appeals, as well and to avoid sanction/removal of his professional nurse's license and that he not have to live "alone ". --DENIED,[app.#13,p28]

The petitioner attempted to petition this Court for an extraordinary writ for protection during pendancy of appeal but it was DENIED upon technical issues. (9 in all), [app. 311,p.26]

As well, the petitioner requested the assistance of Council, for his appeal: DENIED by the trial court and expressed by the Supreme Court" that it could be brought as an issue in brief". Nor was he advised by the Clerk, Under N.D.C.C. Ch 29-32.1-03, (6) as required, in how to petition for legal assistance in post conviction relief. see State v. DeCoteau 464, N.W. 2d 605(ND 1990)

His petition for Stay of the Mandate, upon petition for Writ of Certiorari U.S.: also DENIED.

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[1] The petitioner had requested relaxation of the Rules, in the body of the petition, due to the fact that the opinion contained so many errors of fact of the civil case(Hilgers v. Hilgers 2002 ND 173,653,N.W. 2d79) and criminal case, at App. #6 p,7,8

Statement of the Case/Cases
II.

A. The Law

As raised at trial and on appeal, "a new old law' as expressed by J. Byres, Asst. N.D.A.G., "We wanted our own law to prosecute kidnappings rather than use the Interstate Act".(N.D. was unable to jail Shafer-Imhoff in 2000) In that there was no alleged "kidnapping " and no "abduction" in the criminal charges nor any factual similarity to such an act. As well, the legislative history of the law[1] would reflect a significant question of the validity of the bill, in it's passage, as to compliance with the North Dakota Constitution Article IV, Legislative branch" Section 13,....."No bill may embrace more than one subject, which must be expressed in it's title.": Titled "Divorce and Custody and Support". Senate Bill 2046 included 13 sections including the criminalization of civil cases.

The legislative Council, Yvonne Richter, testified that

> "this one was different from all of the other 12 sections"

There was testimony that "One concern is the abuse and your non-custodial parent who can't do anything. Who do the children turn to? A non-custodial parent should have the right to protect the child." and" A vindictive spouse could use it against the other parent."

In the N.D. 2000 Legislature, the Criminal law was entered as S.B. 2130 as a stand alone bill for N.D.C.C. 12-18.1-05 "At the urging of the Attorney General", It was immediately withdrawn: There are no note or deliberation available to explain why.

It was then reintroduced as S.B. 2046 by the "Family Law Committee" and refereed to the Judiciary Committee.

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[1] After months of requesting the history, Doug had to file a Freedom of Information Demand, to obtain it.

The Family Law Committee was charged by the Supreme Court to review needed changes in Family Law. The same individual who then prosecutes Doug chaired it: the N.D. Attorney General. see separate but equal; State v. Hansen N.D. and N.D. Constitution

The Committee then determines that this law "was inadvertently deleted, from statute, upon the adoption of The Uniform Interstate Child Custody Enforcement Act, 1999". N.D.C.C.§ 14-14.1: The Legislative Librarian relates that there are no notes or transcript to verify this.

It is represented that the issues for Family Law review arose from a questionnaire solicited to the North Dakota Bar Association although testimony does not include exactly what the results of the "questionnaire" indicated. See; North Dakota Constitution Article I, Section2, 'All political power is inherent in the people" i.e. not the state Bar association. As per their lobbyist, again, to address "abduction and kidnapping of children." .....ultimately prosecuted as "removal of a child from the State" where as, in the course of every day life, and common sense would dictate: many children are removed from North Dakota, perhaps, on a daily basis. See; Bearden, 461 U.S. at 664-665(1983) " A law nondiscriminatory on it's face may be grossly discriminatory in operation." Doug was refused extradition or stay or any protection to pursue his civil case and Son's interests in N.D.; McIntee taunted, in his letter to the Disciplinary Board " Maybe Doug Hilgers, before coming to the hearing should talk to the police or Mr. Bennett. In actions against the Child Support Unit, Brenda provided them with a copy of the warrant so they could seek my arrest, if I came there for services.

Doug raised this issue to the Clerk of Court: "We do this all the time".

The dilemma posed by such " discrimination in application" is that the parent must sacrifice their own defense for the welfare and interests of the child.

In fact, upon appeal, Doug asked of the Court---What would be his demise if, under the same facts, if he were a resident of North Dakota? There was no response nor was it addressed in Opinion. See; Amendment XIV. U.S. Constitution; equal Protection: Article IV., Section 2, U. S. Citizens of each State

One must wonder, in that Ch. specific language indicates "detain" applies to only children"under 14 years of age, B.T.L. at the time of the alleged offence, 15 y.o.

It has also been asked: What is the purpose and intent of perpetuating the Statutory Law of The Interstate Act / Compact? Was it "inadvertently" approved by the Legislature?

Doug, unaware of this new/old law and forwarding the fact that the N.D. Civil Courts refused to observe B.T.H.'s abandonment and his physical and emotional abuse and the failure of the Courts and social services to facilitate his dental and medical care, sought petition under the Interstate Act, (MN.) Temporary Emergency Custody in Abandonment: To prevent physical and emotional harm. See: the missing witness, Tweeton; Without solicitation, a prior Sheriff's dispatcher, when Doug went there May 15, 2001 to report again, the multiple beatings and the fact that Birch had to live in a neighbor's home, Tweeton advised Doug that he had , at least twice, witnessed the mother , that Spring, advise the Sheriff that" she no longer wanted the Child in her home. Tweeton months later agreed to testify to this at the criminal trial.[1]

Michael McIntee, Doug's prior attorney, at Swain Benson's request, represented the mother seeking Doug's prosecution and arrest. See: N.D.R.Prof.Conduct and N.D.R.J.Conduct, Cannon 3, Re: Reporting requirements[2].

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[1] Doug did not know Tweetons 'name and the Sheriff refused, to divulge it to him, repeatedly, even upon written demand..

[2] Doug immediately informed the Trial Court of the Conflict of Interest

Doug immediately began to seek help to return B.T.H., even before any MN. hearing (he had incurred a broken neck upon the 3rd trip taking him between Engelstads' home to finish school and his home in Duluth. B.T.H. had threatened to "run", he had no work and no car, and his fiancé's father was acutely ill and dying.)

McIntee, although not licensed to practice in MN.. advised the Bench that Doug was to be arrested at any moment and the mother would then come to Minnesota, after he was arrested: The Court never accepted a word of testimony from B.T.H. Doug was in, almost daily contact with the N.D. Court, the N.D.A.G., MN. and N.D. Social Services, and his older children to assist to return the now, 15 year old child: See:N.D.C.C.Ch. 12.1-18-04 "definitions" Restrain " less than 14 years old"" The mother never came to get him.. She, in fact, before the trial Court stated" Doug, just fill out the papers "and before the very Court that turns down this appeal, B.T.L". can leave any time he wants to". Upon custody reverting to Doug, she never even requested visitation, Doug did this for B.T.L.

B. The Civil Case Hilgers v. Hilgers Ward County 59-C-0959: 2002 ND 173, 653N.W. 2d 179 and Hilgers v. Hilgers 2004 ND 95, 679, N.W.2d 447 1998 - present

The case, after a 18 year marriage, 4 children and a very close father / son relationship between Doug and B.T.H., then 12.

Doug had incurred his second heart attack while working in Indian Health Service and had to go to the private sector, taking a significant wage cut, that Brenda was not at all happy with.

The Supreme Ct. has been advised of it for years 2002 Hilgers v. Hilgers, without mention.

Although the divorce was filed in June 1998, Brenda quit talking to and providing information to her attorney. Her attorney persisted in pushing the issues.

At hearing, Dec.7, 1998, She denied this multiple times, in testimony, even though substantiated in record of another hearing.

She, in ex-parte had accused Doug of locking the "family freezer","to obstruct the children from getting food" et. al In actuality Doug place a lock on the freezer in the garage, with the key on the wall, for safety reasons. Brenda, in fact, had refused to purchase groceries unless she had complete control over family finances.

Doug's petition for perjury charges was left in the Sheriff's drawer for months "I didn't know what to do with it." The local prosecutor called them " inconsequential exaggerations at most": The complaint disappeared under the administration of her ,now, personal attorney/States Attorney.

Doug was expressly sentenced to prison based upon this allegation of the freezer, that the "Trial Judge read in the Divorce"[1]

Doug has had to dedicate the last six years to protecting his Son, attempting to gain review of the original Child/Spousal support orders with 65% withholding in force, $22,000 arrears, and all the attending action i.e. Hilgers v. Minot Child Support, in U.S. Court and Hilgers v. McIntee: McIntee timed his dismissal motion for at the time of trial see "Continuance" ¶ ¶37,38. Hilgers had to sustain simultaneous appeals after sentencing. He could not pay the docket fee until November, 2003 when he was able to attain a stay of the collections in the civil case. The homestead, at issue came up for tax foreclosure at the time for trial requiring $2000 to protect it for the minor child see 'Continuance" good cause"¶¶ 37,38. These, et. al. in the

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[1] At trial, the prosecutor requested and received a limitation of scope of evidence from February 2001 to September 2001 exclusively, but violated it many times.

record but never mentioned upon appeal. and requiring the 1000 mile trip at least every 2 weeks.

In opinion the Court semed to rperesent that Hilgers "transferred the homestaed to his children to evade the Court:¶10 Hilgers own claim-His allusion- In fact, as in brief an known to the trial Court "he read the Divorce": that this was agreed by the parties in July 1998; [n1,2]Doug had never been able to, in 5 years, use this as an assett in any way,; only to attempt to pay the taxes. We have reviewed the information before the trial Court"--Egregiously they do not indicate the $31,000 was for the 2 years past income tax nor consider the %65 payments to the State (with pass through and incentive bonuses): There is no reference what so ever to Hilgers, In-camera documentation of his health status, health car bills, or his tax return interceptions (see Rehearing petition) et.al

C. The Child/Children

B.T.H. was 12, at the time of the divorce, the youngest of 4 children. Even though Brenda had temporary custody during the separation, B.T.H. resided with Doug without her objection: His Mother had told him, in the event of a divorce, he could live with either parent. V.S.H., the other minor child was given the same choice.

As Doug was surprised, B.T.H. knew nothing of the divorce while he and Doug were preparing Brenda's Birthday cake. Of course. Brenda petitioned for and received full custody of B.T.H. along with child support based upon over 30% of Doug's actual wage; Her spousal support was linked to B.T.L.'s graduation (and custody?): She continued to collect it, she did not inform the Courts

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[1] Judge Foughty further attempts to obscure the facts by preventing the children from testifying re; this "asset".

[2] It fare here to inject along with the other conflicts of interests affecting the determining tribunals (See State of the Judiciary" we are in trouble ") Judge Foughty sits on the State Courts Rules Committee and has consistently advocated against rules to consider pro se litigants.

of his living with Engalstads through the late Winter and Spring of 2001. Doug was only allowed to visit B.T.L. "In Bottineau", although Doug now had to live in Rugby due to his employment requirement to be within 15 min of work. See. Opinion ¶1." and awarded Douglas visitation.

In fact, Brenda prevented Birch from calling Doug, taking his phone cards and blocking long distance services of the phone. Nearly every visitation was met with threats of arrest, expressed as by the authority of Judge Ketterling": Upon direct challenge by Doug, he denied this. Even with days and weeks of notice, nearly every visitation attempt was obstructed. Doug made multiple contacts to the N.D.A.G.'s office, Mr. Robert Bennett, to attempt to curtail this abuse.

Birch became increasingly despondent and his mother began to become more and more punitive towards him. His older brother was now enlisted to punish? him. Finally having his head slammed against furniture and profaned, Doug attempted to get a protection order for him and supports at social services. On the day of hearing the petition was moved through 3 jurisdictions, to 100 miles from his home: He and his father could not attend. Doug brought complaint to social services and B.T.L. had an evaluation: Deemed to be depressed and at risk for suicide; Medication was recommended but B.T.L. refused. These records, upon attempting review by the Court, "were destroyed": This later, at trial , found to be false. He never received any follow up and was not permitted to keep his dental appointments. He hit his head on the floor, in gym class, losing vision in his right eye and developed a severe headache and received no medical attention until late that night, when his was able to call Doug.

From August 30, 1998- April 2001, B.T.L. was not allowed to testify at any visitation, obstruction of visitation or any other hearing: Although he witnessed

his mother removing the divorce judgement from his mail and then enlisted to return it 2 weeks later; he was never permitted to testify (" We don't allow children to testify in divorce hearings"), Swain Benson, the State's attorney had now represented Brenda immediately following the "default" hearing her Minot Attorney was allowed to withdraw.

Birch requested, at an attorney's recommendation, he requests a G.A.L.: this was refused 3 times by the trial court. Acknowledging that he was unaware of the revisions of Law March 2001. The N.D.S.C. endorsed his position September 12, 2002, Although remanding the visitation modification moved for nearly 2 years prior, it denied a G.A.L. based on Ludwig v. Burchill 514 N.W. 2d 677 (ND 1998): This decision prior to extensive amendments to N.D.C.C.14-09-06.4 siting at least ten indications for appointment: March, 2001. Astoundingly, the child affected by the case, had a G.A.L. at the previous hearing;" the Court was able to refer to the previous G.A.L. report." Doug was arrested as he left the Supreme Court Chambers in his effort to obtain just and merciful consideration for his son.

B.R.H., Doug's older son was subpoenaed to testify at the trial, by the state. He had written a very condemning statement re: his father and Doug had to examine his own Son . Doug had requested, multiple times if he could assist in returning B.T.H.,: He conceded that Doug " may have". Doug feels it fair and just to assert here, that this was one of the worst and painful events of his life.

In spite of this, there is some healing, but the state can not be interested in such dynamics. While the Jury was out, in front of B.T.H., J. Byers, Asst. N.D.A.G., to a witness and the Clerk, jokingly, states " I see that we haven't had any medical emergencies yet."
R.E. the grand-son of Hilgers and Engelstads: For Robyn Engelstad advocating for B.T.L.; For testifying for his cause: This heroic, caring, human being: Rewarded with

the threat that," SHE WILL NEVER SEE HER GRAND-SON AGAIN": This, the impact upon healing families, by the state's intrusions, " IN CAUSE OF THE PEACE AND DIGNITY OF THE PEOPLE OF NORTH DAKOTA".

As RELIEF, here, the petitioner, mercifully requests that he never be required to repeat these circumstances again.

On November 19, 2000, Doug asked of the Court to compel mediation in these visitation issues: It refused after Benson advised Brenda against it: In North Dakota, certainly permitted "Upon the Court's own motion, in the best interest of the child/children."

D.The Charge:

As in the bulk of the opinion, Particularly at¶1 Only a part of the Statutory text is eluded to See this petition Pg.3

at ¶2" 'Brenda was awarded custody"-- It is an uncontroverted fact that BTH had not lived in her home for over 3 months- In testimony, Brenda had no contact with the child and provided nothing for his keep.

at¶3 "In June Hilgers removed the minor child from Bottineau " In fact Hilgers took him to Minnesota and returned him 3 times but never to Brenda's residence: Doug informed the mother, the Sheriff, [1] the school, the Court all without any objection from any party: In June, Robyn Engelstad, at B.T.H.'s request, brought him to MN.,A neighbor drove Doug to Grand Forks in that Doug could not even drive, due to his broken neck.

On June second 2001, as fast as he could practically do so he submitted a written petition and supporting avadavit, for an emergency interim custody change.

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[1] At this time, Hilgers encountered John Tweeton, The Sheriff's dispatcher where as he offered Doug his direct observation BTH's eviction from his home.

In his Orders June 10, 2001, the trial Court eludes that BTL is on Visitation, although, again, it issues no visitation orders: It issues the financial relief with 2 months retro-activity[1]. The Court gave a scathing response to "Doug scheduling a hearing without proper motion" He refused to participate at any such hearing. (He had never read or acknowledged it.)

> See: Hilgers v. Hilgers The Trial Court abuses it's discretion when it fails to respond to non-frivolous matters."

The Court raised no issues about BTL's presence in Minnesota.

In his attempts to return BTL to return His son, many times, to Engelstads, We struck a moose breaking Doug's neck (BTL was not injured) Doug petitioned Child support to reduce the then 60% with holdings on any wages until he was back to work: They refused. They even brought a contempt charge for his not paying Support, hearing July 12,2001, scheduled for the day before the telephonic custody hearing now scheduled for July 13.[2]

Doug had also made arrangement to return BTL to N.D. to get him supportive counseling. This is when Ms. Lora Howley, social worker advised him that his records were not destroyed, as represented by Bottineau Co. Social Services, and were in Bismarck. Due to having no car now, Doug took BTL to MN. Social Services who arranged for a Sept. 24,2001 Mental health assessment and the Court were notified of such. Birch was now threatening to run away if he ever had to return to North Dakota.

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[1] Appealed from: Motion filed March 1999, decided June 2001, remanded on appeal Jan 2002 retroactivity of Support amounts

[2] Brenda had informed the Court in writing, that she refused to attend

On July 13, 2001 a phone custody hearing was scheduled by Doug, in that he had no transportation for the 1600 mile trip to Williston, N.D.[the Rustad Bench]. [see State V. Lemons 2004 ND 44) re "Determining evidentiary matters: no president;" The Court persistently offered that Doug could not be heard in his cervical brace even though he was nearly yelling into the phone. The Law enforcement officers that had expressed a willingness to testify were now unavailable. Murphy and Henry] for they had many times, witnessed the Child's injuries when he came to them for help, again, B.T.L. had no appointed Guardian ad Litem for this hearing.
The only law enforcement officer available was Steven Watson, Sheriff who had taken BTL's statement on previous beatings but never took any photographs: He was very evasive: Curiously, his phone testimony was also of very poor quality[1] It is remarkable that in his phone testimony, from California, that he denied the existence of this statement of March 2001 and the fact that Doug had requested his assistance in returning BTH
. Doug eventually moved to correct the record, but was denied. At the criminal trial, Watson's phone testimony (see Lemons, "No precedent") Brenda never contested a custody change, through out the whole hearing until the Bench had to ask her.

On August 4,2001, The Order denied a custody change siting "BTL was "not abused although, now 15, and expressly wishing to live with his father and the father son being very close, gave custody to Brenda. Doug immediately appealed and requested a Stay pending appeal. Rustad denied it;" that's just the way we do business"

[1] This/ these phone hearings were always demanded to be at Doug's expense.

Doug wrote to Brenda, asking for her assistance, if BTL, without any intervention, had to return: She never responded. Doug was now only to work with a 5#lifting restriction so he could not get much work: %65 remained withheld from his wages. He requested his adult children to assist, as well: [Re: the testimony of Beau Hilgers, at trial.]

MN. Social Services contacted Brenda and N.D. Social Services and requested their assistance; they both declined so S.S. advised Doug to enroll BTH in school: Upon contact to get his school records, Brenda resisted sending them.[1]

Doug consulted an attorney and based upon BTH's abandonment, without the Court addressing it; that he should file under the Uniform Interstate Compact Re [2]abandonment and threat of injury. This Doug did and served the petition upon the N.D. Court: They returned it rather than incorporating" that the Judges may communicate" Re: the intent of the Act.[3]
Re Order¶ 3 Doug was served with the Order September 11, before it was even issued, It speaks of a warrant: Even though Doug had been in constant contact with the NDAG, The Court, Social Services and Bottineau Schools all, without exception, unwilling to assist to return B.T.H.

Doug's father in law was gravely ill from August to October: passing away October 2,2001. Carol needed her car constantly available to travel to northern MN. to support him and her elderly mother.
The trial Court refused to allow any reference, in testimony, to this. However he permitted Bennett, in closing, to give testimony (not entered at trial) with

[1] All of this material testimony was obstructed by the Court and prosecution See State v. Lemons
[2] at¶3 "see" Hilgers made several unsuccessful custody attempts"
[3] These provisions and definitions sighted in table of Authorities.

respects to Carol's car being available to Doug, to use.

There never was a warrant until late September: Doug determined this by contacting Byres at the N.D.A.G. who said that MN would arrest him. Authorities, momentarily. Minnesota denied this Extradition was not pursued: This was issued after Doug had received fund from MN. Social Services to help return B.T.H.: Robyn Engelstad came to Grand Forks MN. to pick up BTH and Doug provided her with the gas money.

Doug requested a copy of the warrant with which to respond: Bottineu Clerk and Sheriff would not provide this until late December 2001 and only with "Mr. Bennett's approval" He immediately asked for a hearing and benefit of responding to summons (Rule 3, NDRCrimP) so as not to be arrested and further threaten his health and make it affordable to accomplish: DENIED by Ketterling[12] Doug was then arrested, in Bismarck, after walking by the N.D.A.G's office, and completing his Oral Argument of these very matters.

Given no access to phone or legal references, Hilgers Drafted a hand written Petition to the N.D.S.C, to Stay the Contempt Order that they were to review: Denied at App. #16, p. 30,31

See Dicilpline of Wilke 2001 SD 148,638 NW2d 245 "Clearly the requirement of candor towards a tribunal goes beyond simply telling part of the truth. It requires an attorney to be fully honest and forthright.

---

[1] The Clerk informed Doug that Judge Richard Geiger would preside and that" Judge Ketterling would not allow himself to precede"

[2] In the Grand Fork's case, on the same charge, State v. Sorenson, was allowed to have a phone, initial appearance, from Arizona. See; State v. Lemons

Every Court has the right to rely upon an attorney to assist it in ascertaining the truth of the case before it." What is so striking here, in the founding civil action, that Bennett describes to the trial Court, as" a minor collateral process" entailed the influence of Benson, through McKintee, and Bennett through McIntee, actually influencing the Civil Court, before the Civil process is completed, to develop this criminal charge against Hilgers; This exists in the letters faxed to the Rustad Court and the Minnesota Court.
McIntee, Benson, and Bennett clearly did not want the civil, quasi-criminal process, required under Statue to proceed i.e. hearings, testimony and evidence, in front of the Court or an alternated court and possibly a Jury (by right) Asserted a insult to the Due process rights, of Hilgers in founding the Criminal charge. As well, he was given no rights or warnings re: Criminal rights

.

E: The Trial

At #25p.34, 35 App; Appears the Court's Trial plan for 2 days of trial, at Bottineau N.D.: Doug had presented at Initial Appearance #! And #2 . at the Court's convenience, there was January "continuance". Bennett, as informed by Doug that he wished to waive a "preliminary hearing" and examine Brenda in front of a Jury: wrote a cluster of objections that Doug had to have an attorney, under Crim Rule, Rule5.-He became enraged at Doug and Related " I am not going to talk to You" Doug never did have Counsel at the time of the preliminary hearing. The "opinion" merely says at¶3 The public Counsel was withdraw when the trial court found Hilgers was not indigent" It was, in fact, by Bennett's motion "To Remove or Modify, App#25 atp.37, that provoked the Court's action. There was no "hearing as demanded in his motion; There were no subpoenas requested or issued to gain all of the information he deemed fit for review: There were no cautions re: 5 Th Amendment Rights:

There or "In Camera" review as afforded By Rule and In DuPaul: Hartyl was released before any review/hearing took place: In the questions to Hartyl : He did not even have access to the criteria for establishing indigence: either did hilgers and he sought them from the Clerk and the Court Administrator.

The Court was fully informed of Hilgers medical status and requirements for medication and C.P.AP. breathing support:

Bennett even contested return of Hilger's bail so he could afford to travel to North Dakota. To this point in winter and spring, he could only afford a motel on one occasion and had to sleep in tree rows, ice fishing houses or unheated garages. On the 2nd day of trial, Doug had not slept for 3 days and expressed to the Bench that he was exhausted.
He is very limited in how much nitroglycerine he can take because it makes him severely ill.

B.T.H. was constantly at his Father's side Doug' unquestionable responsibility, to support him and to find protection for him, in this process. His mother, again, abandoned him, in his needs. It is striking that in testimony, Mr. Bennett never addressed a single question to B.T.H re his physical, mental, treatment or the fact that he could not live in the "custodial home". ---this action in the interest of justifying the State's intrusion.

At hearing, the Bench stated "that I know you don't have any money" The Ketterling Court stated" I can understand that you are not familiar with the Rules of criminal procedure." Never the less, the Court recognizing this, granted the costs of some of Hilger's subpoenas
Also said of the Court; "You have concealed assets": Doug multiple, written and oral demanded an independent jury review of the accusation/charge, a class c felony---IS THIS A JURY QUESTION? [See in Table Authorities]

At trial, the Curt, upon Hilgers' request for Judicial Note of the Uniform Custody Act, responded," we can make a jury instruction for it."--It was never done.

The Pre trial Statement eludes to a 'pre-trail phone conference, February 28,2003, App. 24 at p. 36,37. There is not any reference to the Evidentiary hearing, by phone, for Doug to justify his subpoenas. [Se; State v. Lemons;" No president"] Doug had asked for Subpoenas since October, 2003 CrimP. 17,b "the court shall order at any time"¶39 In actuality he on the record, he denied them because: 'You can not subpoena lawyers and judges" and" he would not subpoena the out state witness"

Doug was there, he had come to pick up transcript and to read his Orders from motions, from over a week before that the Clerk would not give him by telephone, a and were relevant at this "pre-trial hearing". Steven Watson was there and heard all of the ex-parte references to witnesses, including Jon Tweeton, who Watson had refused to provide the name of, for months. This ex-parte hearing, included Watson, testimony.

Doug received no warning of nor was he prepared for this evidentiary hearing.

It remains a physical impossibility, that all or a significant part of his testimony could have been transacted at a 2 day trial, including Jury selection.

At Jury instruction deliberations/exceptions, upon Doug's claim that this would take a great deal of time: Judge Foughty merely stated " I am not going to let any of this in". Doug's Jury Instructions including re: the Interstate Act. See N.D.R.Crim.P. Re objections; "the Court shall give counsel adequate time to address their objections."

The Jury stayed out until the evening of the second day: There could not have been sufficient time for Doug's witnesses or his own testimony[1]. Doug was very ill at that time, as well as the next day. Birch was very distressed by Byres' remarks, in the hall re: Doug's health.

---

[1] The Court, Doug having no Counsel, rejected Doug's request to appoint a person to examine him.

F The Jury: Doug raises the question here that, under the Constitution of the U.S. Due Process, Jury trail; North Dakota Constitution, section 3. Jury Trial, Arizona and Champlaine Jury Instruction Standards at Impasse; and N.D.R.Ct Rule 6.9 " must not be coercive, suggestive, or unduly intrusive" Here at impasse the Court , actually barters with the Jury to offer something in lieu of the verdict they want or to continue deliberation.

Question; Is this affront to the basic principles of a jury verdict that the Court can "let the Jury off of the hook", by an/any inducement? Including a statement, that he well knows he will remove from the file of the case and verdict. Is there a lawful and constitutionally sound conviction by this verdict?

The Court uses a pattern Jury instruction, identical App#26 p.36 to the CIVIL Instruction for a "defendant" There is no CRIMINAL pattern Jury instruction approved at time of trial.

Does this jury instruction comport with the constitutional?

Requirements of self-representation: i.e. is there an intelligent, written waiver? Is the Jury mislead from the fact that under N.D.R,CrimP Rule 44 (a) that "the Court shall appoint counsel, if the defendant is unable to obtain one?

Is this why the D.N. Supreme Court does not authorize them or confer constructional validly. see

Is this a mistake of law and basic rights? Rule 52 "obvious error"?

Is it obvious error for a juror, expressed to Not being able to be impartial" remaining on the Jury and not challenged

Under California v. Green 399 U.S 149,176

Constitutional right to a Defense; Is it arbitrary, unconscionable, or unreasonable, that a defendant void of legal assistance would not have a single affirmative defense with which the jury could be instructed, to fairly determine

his guilt or innocence; Not withstanding the instruction that he and the Jury were told they would receive?

The Constitution of North Dakota, Section 4. Recites ...for libels, the jury shall have the right to determine the laws and the facts under the direction of the Court, as in other cases. **Does this fundamental and basic right, afforded, by the bedrock foundation of our system of Justice become to be construed that the Government would under application, control the facts and law that a jury considers rather than instructing or teaching them, upon their questions of relevant law?** " The Framers put a jury trial guarantee in the Constitution was that they were unwilling to trust that the Government to mark out the role of the Jury." see-Aprendi

G. The Sentence

On May 28, 2003, the trail Court well aware of the fact that and what facts under the Defendant has granted custody of the minor Son

> " I have given you a deferred sentence because of what you have been able to accomplish civilly"
>
> "Is this a paraphrase of I think that we have made a mistake here?
>
> Is this court to think that the defendant kidnapped and abducted his son, as the legislature seemed to have intended?
>
> Does this Court, under the powers granted him through the government, by the people, not in any fashion conceive that the Child as a victim here?
>
> Is this, in large part and in application due to the fact that this law was constructed as to grant special privileges to one class at the cost of all others?

Did Doug receive a vastly disproportionate sentence than what the jury, given their insight and compassion, that only a jury can decide/dispense, would have given him?

H. The Appeal/Opinion Throughout, the petitioner has indicated the grossly inadequate representation of the opinion and demonstrated to what extent they do not assist this Court in ascertaining the truth. Although attributing this lack of reference in the transcript, there exists an extensive file as demonstrated in the certified docket of the case. The petitioner was required to extend his Rehearing petition beyond Rule in order to justly address these. He did request relaxation of the Rule, in this regard but he is unaware if this was considered in the rejection of his rehearing.

I. The Legal Representation

In the case of State v. Hilgers, Not only is there an obvious lack of professional and competent representation for the Defendant but a vast disparity of quantity of resources expended by the State of North Dakota in an effort that may well not serve it's residents what so ever.

As well, as the Petitioner would understand it, there is an imperative for honesty and candor that predicate all of the instruments brought to bare, by the State upon a private citizen, particularly one that is absent any defenses for which he may be accused.

Without reservation, the petitioner expresses the utmost respect and admiration for Chief Justice VandeWalle, nearly thirty-year effort to provide constitutionally sound legal representation to the people of North Dakota..

In Blakely v. Washinton the argument raise as to go forward piecemeal or to apply a law/opinion/or safeguard "as cases arise in which such questions can be answered." or to apply them broadly and not jeopardize large groups of defendants.

As a recipient of North Dakota's Indigent Defense Systems Rule and Statutes it is apparent in reviewing cases, as authoritative references, they apply very remotely if at all to the petitioners rights and protections

The North Dakota Supreme Court has attempted to work with the Legislature, for nearly 30 years to develop a System, as would satisfy the Constitutional safeguards of the The U.S.Constitution, Amendment IV and VI but to less than full success. The Spangenberg group, amongst all states rate, North Dakota, at the bottom for cost expended per capita for Public Defense Systems. North Dakota expends less than 1/2 the Average per capita where as Montana expends 50% above the average. This is , unfortunately, likely to expressed not in the formulation of adequately constructed laws and guidelines but in reducing the overall cost by reducing the number and complexity of cases. per Chief Justice Van Vande Wallee, in his June 6,2004 Report on the state of the Court

¶9"I have been concerned for a number of years about the administration and funding of our indigent defence system."

¶9 Although the 2001 interim study did not result in legislation to solve the problems, it did serve to increase the awareness that we are in trouble with our current system."

¶9 ' I will not further belabor you with all of the deficiencies of our present contract system other than to underscore that in addition to the conflict of interest resulting from Judges operating the indigent defense system, we are woefully undefended....."

In State V. Hilgers, the Court does not render any site comparable to the Attorney General's prosecutors moving for "Removal or Modification of the Defendant's Public Counsel" In Fact, DuPaul, who was assured no jail time for D.W.I. and had previously released several Public Defenders was reassured of his in-camera privileges if he were only to make an effort at representing his indigence 527 N.W. 2d at 727; In fact his appeal was untimely by one day and wouldn't

warrant review upon these issues at all save the precedent common law as applied in Hilgers

No one is entitled to a "free" attorney
if he can afford one."

" DuPaul has not provided the Court with sufficient information for the Court to determine him indigent. Hilgers expended 3 different submissions with respect to his indigence only sparsely related in appeal

North Dakota has long used indigence application evolved from other states (Iowa) and repeatedly addressed in NDAG opinions and in the Criteria for determining Indigence, Furgison Supra (N..D. 1983)
"We adopt guidelines for trial Courts stated in Furgison(et.al) The appointment for Counsel is discretionary, but applications should be read in a light most favorable to the applicant. If a substantial issue of law or of fact exists counsel should be appointed." In

In Hardy v. U.S. 375 U.S. 277 9US 1964
' If we are to keep our democracy ther must be one commandment; Thou shall not ration justice"
Indigence must be conceived in a relative concept

Powell v. Alabama 287 U.s. 45,68-69
" Requiring the guiding hand of Counsel"

State v. Schneeweiss 2001 ND 120 as applied in opinion Hilgers ¶7 " before counsel is appointed a defendant has a burden off proof of establishing he is indigent" Scheenwies did in fact say he had consulted with his own attorney and had hired one: He in fact
released a public defender appointed to him and, as in DuPaul did not even show up at his hearing to review the issue. This was a first offence DWI by statue, without jail time.

The Guidelines that hilgers the guidelines to refer to. Hilgers beseeched the Court for time to do his research and conduct his defense with aim to reference as many authorities as possible on an issue so vastly affecting his fate.

Where in:
"A needy person is one who at the time of requesting counsel is unable , without undue financial hardship, the necessary to provide full payment of legal Council and all of expenses for representation"

Hilgers was from out of state and already had multiple conflicts of interest with attorneys in the Bottineau area.

As in DeCoteau, Doug would have been liable for recoupement as in Strange v. Kansas (chilling affect but including homestead in consideration) of N.D. System. If Hilgers were found innocent, he would still have to pay.[see Fuller v. Oregon the non-chilling effect] that would idealize the intent of Equal protection..

The trial court said at hearing'" I know that you don't have any money."
He as well asked if Doug owned any other property and knew that he did not.

The state, as well, in his representations knew as did Judge Ketterling, upon making the appointment, that was for stand by counsel because Doug was not familiar with Criminal procedure ; The outcome, not withstanding Doug's health, were predictable.
He knew , as well, that Doug had very little in the way of resources after the divorce(and likely

less[reasonable] after a 5 year saga in the Courts that goes on to this day..

Doug only asked for assistance of counsel. He never represented the demands in Farretta: For the state surely knew why he must survive this trial

J. The Record

Under North Dakota Rules, N.D.R.Crim.P. Rule 44,(b) costs and services for an adequate defense, and Griffin v. Illinois, 351 U.S. 12 in the criminal prosecution and the appeal having been granted, and not withstanding Hilgers efforts to obtain a stay in order to preserve his resources to obtain the record and even provide the record at some point,(rehearing) to assist the Court in review.— He asks if his basic rights in effectively pursuing an appeal granted, with due process protected, fatally and fundamentally altered?

K. Argument: Hilgers conditionally argues, in that he has no guiding Counsel, nor even sufficient health to represent his cause effectively That; Upon this law/offense, used upon the defects in provision of basic Constitutionally protected rights under the Constitution and Laws of the United Sates and North Dakota.

He argues that he, as well as a significant number of citizens, upon the impact upon cherished institutions require consideration of the Court's wisdom and protection to preserve their value and perpetuation, in our society, as our Founders likely intended. To be free from the misapplication of Law and of Governmental intrusion into their cherished relationships, when the product to society is not appreciated.

For, we pray, that some good must come of our misfortunes and mistakes and will lift us up.

L .Relief Requested

1. The petitioner, respectfully requests, that upon such issues, if the Court finds meritorious the petitioner., that be assisted by a competent and concerned friend of the Court, to forward such matters more effectively.
2. That the conviction , in the matter, be dissolved and overturned.
3. That the honorable Gerald v. Vande Walle, the North Dakota Courts and it's Citizens receive such direction and/or resources to enhance their public systems that service indigents, children, and families
4. That such Laws as applied in this domestic venue and not affording equal protection to all parties, including children, be stricken or modified.

Respectfully submitted

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Jan 13, 2005

PUBLISHER'S NOTE:

ORIGINAL PAGINATION IS NOT CONTINUOUS

United States Of America

In The Supreme Court

Hilgers V. North Dakota

On Petition for Writ of Certiorari

To The Supreme Court of North Dakota

The Petitioner: Declares, under the Laws of the United States and under penalty of perjury declares that his petition and the attending references and reformats represent his truthful and good faith efforts in a just representation of his cause.

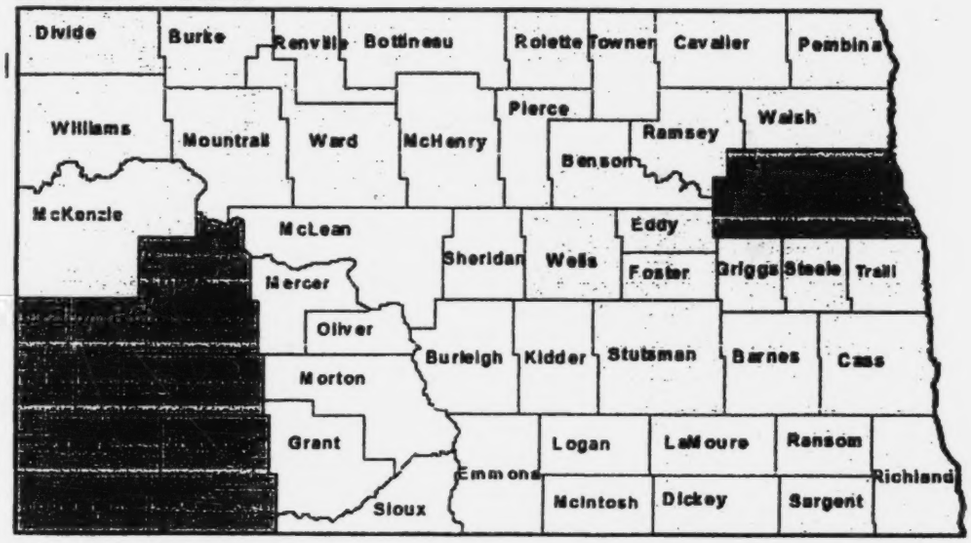
In Pro Se
Doug Hilgers Doug Hilgers on January 7 ,2005
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Wendy J. Wakefield 1-7-2005
WENDY J. WAKEFIELD
NOTARY PUBLIC-MINNESOTA
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North Dakota Supreme Court - Districts ▲ ?

District Courts



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Districts

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- Southeast Judicial District
- South Central Judicial District
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